BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

CATALYST WOMEN'S ADVOCATES, INC.

Employer

and Case 20-RC-17556

COMMUNICATION WORKERS OF AMERICA, LOCAL 9414, AFL-CIO, CLC

Petitioner.

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

- 1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- 2. The parties stipulated, and I find, that the Employer is a California not-for-profit corporation with a place of business in Chico, California, that is engaged in providing social services related to domestic violence. The parties further stipulated, and I find, that during the twelve month period ending October 31, 1999, in the course and conduct of its business, the Employer received gross revenues valued in excess of \$250,000, and that during the same period, the Employer purchased and received goods and/or services valued in excess of \$5,000

which originated outside the State of California. Based on the parties' stipulation to such facts, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this case.

- 3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
 - 4. The parties stipulated, and I find, that there is no contract bar to this proceeding.
- 5. The Petitioner seeks to represent a unit comprised of all direct client service workers employed by the Employer; excluding the executive director, executive administrator and program director. The Employer contends that the counseling interns are not employees under the Act but are students working for the Employer in order to work sufficient counseling hours to become licensed by the State of California. The Petitioner takes the position that the counseling interns are employees under the Act who should be included in the unit. The Employer further contends that the shelter director, domestic violence response team (DVRT) coordinator and volunteer coordinator should be excluded from the unit because they are supervisors under the Act and/or managerial employees. The Petitioner takes the opposite position and seeks the inclusion of these positions in the unit.

Stipulations. The parties stipulated, and I find, that the individuals in the following classifications should be excluded from the unit because they are supervisors under the Act based on their authority to hire, fire and discipline employees: Executive Director Maryann Johnson, Program Director for Intervention Services Lynne Pierce, Program Director for Education and Prevention Anastasia Snyder and Administrative Director Linda Allison. The record discloses that these positions are 40-hour a week exempt salaried positions paid at \$30,000 to \$35,000 a year.

The parties further stipulated, and I find, that the individuals in the classifications of weekend supervisor, evening supervisor and night supervisor are not supervisors under the Act and that the program assistant to the volunteer coordinator is an employee under the Act who is included in the unit.

The parties stipulated, and I find, that the volunteers who work in the Employer's programs are not employees and should not be included in the unit. Although the parties dispute whether the counseling interns are employees and should be included in the unit, they stipulated, and I find, that if the counseling interns are employees, they are professional employees. In addition, they stipulated, and I find, that the legal advocate employed by the Employer is not a professional employee. No party contends that there are any other professional employees in the unit and the record discloses no evidence to support a different conclusion.

<u>Background</u>. The Employer is a private non-profit organization that provides social services to victims of domestic violence in Butte and Glenn Counties in California. It operates a twenty-four hour crisis line and a shelter for victims of domestic violence. In addition, it provides counseling services; assistance with obtaining restraining orders; court accompaniment for clients who represent themselves in court; educational services; and prevention activities.

The Employer's largest volunteer program is its 24-hour crisis line that is staffed by volunteers 24 hours a day, every day of the year. The crisis line is located at the Employer's shelter which is at a confidential location. The Employer's other major volunteer program is the domestic violence response team (DVRT) program, based at the Chico police department. The DVRT coordinator and a program assistant work out of the Chico police department in this program. Volunteers in the program go out with police officers 24 hours a day and visit locations where domestic violence has occurred.

At the Employer's main administrative office in Chico, the Employer provides counseling and conducts restraining order clinics and performs all of the administrative functions associated with the Employer.

The Employer also operates an outreach office in Orland, California, where people can walk in or call during regular business hours to receive assistance. Counseling services and restraining order clinics are also provided there once a week. Client Service Advocate Joni Gamar is based in Orland. Other staff members, including the Employer's legal advocate; counseling interns; and the children's advocate go to the Orland office on a weekly basis to provide services.

The Counseling Interns. As indicated above, the Employer contends that the counseling interns are not employees of the Employer but rather students who should be excluded from the unit. The Petitioner takes the opposite position.

The Employer employs five counseling interns who are responsible for providing group and individual counseling sessions to clients and their children. The group sessions are scheduled weekly sessions at the shelter, the Orland office, or elsewhere. Most of the individual sessions are by appointment and held at the Employer's main office. The Employer's office schedules the initial visit by the clients. However, after a client-therapist relationship is established, the counseling intern does his or her own scheduling of appointments with clients. The counseling interns have a confidential relationship with their clients and do not discuss the substance of their conversations with clients with the Employer's managers.

Program Director Pierce hires and provides the non-clinical supervision for the counseling interns and handles the logistics of arranging for space for them to see clients. The

average length of employment of a counseling intern with the Employer is about two years. According to Executive Director Johnson, this is because they are supposed to obtain counseling experience in a variety of areas and the Employer can only provide experience relating to domestic violence. No counseling intern has ever remained employed by the Employer after obtaining their license. The interns work from three to fifteen hours a week. Twenty hours is the maximum number of hours a week that they may work. In order to be hired by the Employer, a counseling intern must be in or have completed a Master's degree program; have a license as an intern with the State Board; and be supervised by someone who is licensed. Johnson testified that the counseling interns currently in the program have attended Chico State, Sacramento State or San Francisco State Universities. Three thousand hours of clinical experience is required in order to be licensed. According to Executive Director Johnson, five to six years is usually required to accumulate that number of hours of clinical supervision practice.

The counseling interns are paid \$10 an hour. They do not receive benefits because they do not work the minimum number of hours (i.e., 30 hours a week) to obtain benefits under the Employer's program. The Employer files W-2 forms for the counseling interns.

After a counseling intern is hired, the Employer's role is to ensure that they are providing counseling services to someone that comes within the eligibility requirements of the Employer, i.e., have issues involving domestic violence. Clinical supervision of the counseling interns is provided by Licensed Clinical Social Worker (LCSW) Sally Gjestson who has been contracted by the Employer to provide such supervision. No party contends that Gjestson should be included in the unit. Pierce testified that Gjestson meets with the interns in her office in Chico

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At the time of the hearing, two of the counseling interns, Diane Buuck and Loretta Carter, had worked for the Employer for about two months; counseling intern April Chavez had worked for the Employer for about eight months; and counseling interns Adrienne Parker and Joe Michael had worked for the Employer about three years.

and reviews them on a quarterly basis. She does not use the Employer's evaluation form in reviewing them. Gjestson discusses with Johnson and Pierce how each intern is doing, including their interaction with the other staff, and whether they arrive for appointments in a timely manner. The Employer does not evaluate the counseling interns and Gjestson does not submit her evaluation of the counseling interns to the Employer. The Employer maintains files for the counseling interns which includes their resumes, time sheets, and counseling notes. However, only the counseling interns have access to counseling notes.

The counseling interns have contact with the legal advocate whose desk is located between the two counseling offices in the Employer's main office. The counseling interns also interact with the client services advocate Joni Gamar who is the only permanent staffer in the Orland office.

Analysis. As noted above, contrary to the Petitioner, the Employer would exclude counseling interns from the unit on the basis that they are not employees under the Act. In *Boston Medical Center Corporation*, 330 NLRB No. 30 slip op. (November 26, 1999), the Board overruled earlier Board decisions in *Cedars-Sinai Medical Center*, 223 NLRB 251 (1976) and *St. Clare's Hospital & Health Center*, 229 NLRB 1000 (1977), which held that medical interns, residents and fellows similar to the counseling interns at issue in the instant case, were primarily students and, therefore, not "employees" within the meaning of the Act. In so doing, the Board noted that the language of Section 2(3) of the Act states that:

The term "employee" shall include any employee . . . unless the Act [this subchapter] explicitly states otherwise . . . but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual employed as an independent contractor

In Boston Medical Center Corporation, the Board reasoned that as the breadth of Section 2(3) was "striking" and the exclusions listed in this section did not include students, that unless there were other policy or statutory reasons for excluding students, they came within the plain meaning of "employee," as defined in the Act. 330 NLRB No. 30 slip op. at page 9. The Board found that the essential elements of the relationship between the interns, residents and fellows and the employer in that case were of an employer-employee nature. Thus, the Board noted that the classifications at issue worked for an entity that was an "employer" within the meaning of the Act; that they were compensated for their services; and that the employer withheld Federal and state income taxes and social security from their salaries. Id., slip op at page 9. In addition, the Board noted that the classifications at issue provided patient care for the employer and the advanced training in the specialty that the individuals received working for the employer was not inconsistent with status as a statutory employee. As the Board observed: "That they also obtain educational benefits from their employment does not detract from this fact. Their status as students is not mutually exclusive of a finding that they are employees." <u>Id.</u>, slip op. at page 10. The Board likened the individuals at issue to apprentices, which are statutory employees in other industries.

The Board further noted that the language of Section 2(12) of the Act defining the term "professional employee" embraced the individuals in the classifications at issue because they were clearly individuals who had completed "courses of specialized intellectual instruction and study" acquired by a "prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital," and were "performing related work under the supervision of a professional to qualify to be a professional as defined in the Act <u>Id.</u>. slip op. at page 10.

Application of the analysis set forth in <u>Boston Medical Center Corporation</u>, <u>supra</u>, to the facts herein leads to the conclusion that like the interns, residents and fellows in that case, the counseling interns herein are statutory employees. They work at the direction of the Employer, which is an "employer" within the meaning of the Act, and they are compensated for their services by being paid an hourly wage. Further, the Employer withholds Federal and state income taxes and social security from their salaries and files W-2 tax forms for them.

As the Board observed in *Boston Medical Center Corporation*, slip op. at page 10, a review of cases involving students shows that there has never been a question that students are employees and their eligibility to vote must be determined based on community of interest considerations. Under the application of traditional community of interest factors, I find that the counseling interns should be included in the unit herein as they have contact with other unit employees; earn a wage which is comparable to that earned by other unit employees; work in the same facility as other employees that are included in the unit; and provide services which are functionally integrated with those provided by other unit employees.

In reaching my conclusion that the counseling employees are statutory employees who cannot be excluded from the unit on that basis, I have considered the arguments and cases cited by the Employer. However, the Employer's argument is based on cases which rely on the Cedars-Sinai, supra, analysis, which was overturned by the Board in Boston Medical Center
Corporation. Accordingly, I do not find the Employer's argument in this regard to be persuasive.

In these circumstances, the counseling interns will be included in the unit. Because the parties have stipulated, and I have found, that the counseling interns are professional employees, they will be accorded a *Sonotone* election as discussed below.

The Children's Advocate, Client Services Advocate and Legal Advocate. The Employer employs a children's advocate, Mia Justine; a client services advocate, Joni Gamar; and a legal advocate, Fred Chavez. Justine and Chavez sometimes work at the shelter. Chavez is on leave of absence after completing his first year in law school in order to participate in a training academy for the National Guard. According to Johnson, Chavez came to the Employer with extensive experience in restraining orders. He works 30 to 35 hours a week for the Employer; receives benefits; and is paid \$9 an hour. The parties agree that Chavez is not a professional employee. Children's Advocate Mia Justine conducts a group children's program for children involved in domestic violence. She earns \$8 an hour. Client Services Advocate Joni Gamar is the only employee assigned to the Employer's Orland office on a regular basis. She earns \$9.50 an hour. The record does not otherwise disclose details regarding the work or qualifications of these individuals. As no party seeks their exclusion from the unit, and the record discloses no basis for excluding them, I find that Justine, Gamar and Chavez should be included in the unit based on their substantial community of interest with the other unit employees. In this regard, I note that they share common supervision with and have contact with other unit employees; receive pay rates comparable to those of other unit employees; and their work is functionally integrated with the work of other unit employees. I also note that the parties stipulated that Chavez is not a professional employee and no party contends that Justine and Gamar are professional employees.

The Receptionist. At the time of the hearing, the receptionist position was vacant and the record discloses little evidence concerning this position other than that the wage rate for it is \$7 an hour and that the Employer was seeking to hire a new receptionist. Consequently, I make no determination as to the unit placement of this position.

<u>Supervisory and Managerial Issues</u>. As indicated above, the Employer contends that the shelter director, volunteer coordinator and DVRT coordinator should be excluded from the unit as statutory supervisors and as managerial employees. The Petitioner takes the opposite position.

Shelter Director Tami Ritter. The Employer operates a 20-bed shelter for victims of domestic violence that is located at a confidential location. As indicated above, its crisis telephone line is also operated out of the shelter. Tami Ritter has been the Employer's shelter director since October 1998. She works Monday through Friday, from 8:30 a.m. to 5:30 p.m. Ritter oversees one evening supervisor (Marlene McCollum), two weekend supervisors (Erin Abdallah and Cher Wolfenbarger) and one night supervisor (Julie Whited), (herein collectively referred to as the shelter supervisors), all of whom work at the shelter. As indicated above, the parties stipulated, and I find, that the shelter supervisors are not supervisors under the Act and should be included in the unit.

The record contains an undated position description for the shelter director position which states that the shelter director reports to the program director and is responsible for direct client services at the shelter and shelter management. The responsibilities of the shelter director include, in relevant part, recruiting, training, supervising, developing and evaluating shelter supervisors; providing case management and advocacy for shelter clients; serving as client liaison and advocate for appropriate services; maintaining client files; monitoring client compliance with shelter policies and individual contract requirements; facilitating weekly shelter staff meetings; and maintaining shelter facility upkeep and general house management. The qualifications for the position include, in relevant part, a bachelor's degree in social work or a similar discipline, or equivalent experience, and "supervisory experience." The position description states that the compensation for the shelter director is at 40 hours a week at a rate of

\$10 to \$12 an hour with "travel reimbursement and benefits as per current personnel policies." This job description was written by Executive Director Johnson.

The record also contains position descriptions for the positions of day supervisor, weekend supervisor, evening supervisor and night supervisor that were created by Executive Director Johnson. The descriptions for the weekend, evening and night supervisors state that they are responsible to the shelter director; the day supervisor position description states that it reports to the program director. The day supervisor position was vacant at the time of the hearing. Shelter Director Ritter had been the former day supervisor prior to her promotion to shelter director and continued to perform the duties of the day supervisor after her promotion. The record did not disclose whether the Employer intended to hire a new day supervisor.

Each of these job descriptions states that the position is responsible for direct client services at the shelter and shelter management during their respective hours. They are responsible for many of the same duties as the shelter director, including providing management and advocacy for shelter clients; serving as a client advocate and liaison for appropriate services; monitoring client compliance with shelter policies and individual contract requirements; attending staff meetings, conferences and training as appropriate; and maintaining shelter upkeep and house management. There are no supervisory-type duties listed. The qualifications for these positions include, in relevant part, a bachelor's degree in social work and the ability to cope effectively in crisis. The day supervisor position includes the qualification of "supervisory experience," but none of the other three position descriptions (i.e., for weekend supervisor, evening supervisor, or night supervisor) include such a requirement. According to Program Director Pierce, these job descriptions were updated about a year prior to the hearing to show that the shelter supervisors were no longer to report to Program Director Pierce but rather to the

shelter director. Pierce testified that this change was announced to the shelter supervisors in a meeting and that a copy of the new updated position descriptions had been given to them.

According to Pierce, this change had also been discussed during job interviews for shelter supervisor positions that had been conducted since Ritter became the shelter director.

Shelter Director Ritter testified that she supervises the shelter, ensures that it is running efficiently and that clients are being provided for and receiving necessary services. She testified that most of her time is spent dealing with physical maintenance issues pertaining to the operation of the shelter. She also does case management with clients and answers any questions that shelter supervisors have regarding Employer policies and procedures.

Ritter testified that she spends about 10% of her work time overseeing the shelter supervisors and participating in the hiring and evaluation process with regard to them. With regard to overseeing their work, Ritter testified that the shelter supervisors are authorized and able to handle all ordinary situations that arise during their shifts. According to Ritter, their job functions are well-defined in their job descriptions and she does not give them daily assignments of work. They generally communicate with her only about once a week to seek her advice or assistance in handling an unusual situation that has arisen or to have a loan authorized. Ritter testified that she does not have to consult with anyone about authorizing loans because the Employer has an established policy in this regard and she knows how much the shelter has in petty cash from which to make a loan that is requested.

As indicated above, there is no day supervisor at the shelter. Ritter was formerly the day shift supervisor and was promoted to the position of shelter supervisor. She testified that in her current position, she performs essentially the same job that she did when she was the day supervisor, which includes many duties identical to those performed by other shelter supervisors.

However, Ritter testified that even when she was the day shift supervisor, she carried additional responsibilities with regard to monitoring the operation of the shelter that were not set forth in her day shift supervisor job description. This included taking calls from other shelter supervisors who needed guidance as to how to handle situations that had arisen. Ritter's promotion apparently resulted from her having approached management and pointing out that she was doing more and different work than was set forth in her job description as day supervisor.

Ritter testified that she is present at the shelter during the day and is on call the rest of the time. According to Ritter, she does not have direct contact with the shelter supervisors on a daily basis. Ritter ends her shift at about the same time that the evening supervisor commences her shift. As a result, Ritter has minimal contact with the night supervisor and her communication with the evening supervisor is generally limited to notes left in each others mail boxes. She testified that her supervision consists of notes to the evening supervisor informing her of such matters as the shelter being out of a certain grocery item and asking if she can pick it up; or informing her that the pager is not working. According to Ritter, the shelter supervisors also leaves notes to each other with similar types of information as to the status of the shelter at the end of their shifts.

Ritter testified that the Employer's policies are set forth in the Employer's personnel manual and that she had nothing to do with formulating them. She testified that she does not develop new policies but that if she wished to change an existing policy, she could recommend the change to Pierce. However, she could not implement any change without first consulting with Pierce. She further testified that she has no authority to grant employees pay increases. According to Ritter, she feels free to make decisions that directly affect the running of the shelter, its maintenance and its clients, but she does not feel free to make decisions that affect the

staff of the shelter without first consulting Program Director Pierce. Ritter testified that she consults with Pierce a couple of times a week to discuss issues concerning the shelter and its staff. She does this by paging Pierce or by leaving messages for her.

The Hiring Authority of the Shelter Supervisor. Program Director Pierce testified that Ritter has no independent authority to hire employees and must consult with Pierce or higher management before any hiring decisions are made. Ritter does not recruit employees for hire even though this is a responsibility set forth in her job description. Nor does Ritter screen job applications submitted to the agency. She does participate in interviews of applicants that are scheduled by Pierce. Pierce testified that four employees (Marlene McCollum, Cher Wolfenbarger, Erin Abdallah and Emily Ryan) had been hired since Ritter became shelter director and that Pierce and Ritter had jointly interviewed the applicants, including Marlene McCollum. Pierce testified that she believed that she had handled the first couple of interviews in order to model how they should be conducted for Ritter because Ritter was new in her job. Pierce testified that after the first two interviews, she and Ritter alternated asking questions to the applicants. Pierce testified that the decisions to hire Cher Wolfenbarger, Erin Abdallah and Emily Ryan, had resulted from the joint decision of Ritter and Pierce.

Ritter testified that she had participated in the interviews of McCollum, Wolfenbarger and Ryan, but had not been involved in the interviewing of Erin Abdallah, who was hired about four and one-half months prior to the hearing in this case by Pierce. Ritter testified that she had complained to Pierce about not participating in Abdallah's hire, and had been told that she would be allowed to talk to Abdallah before Abdallah started work.

According to Pierce, evening supervisor Marlene McCollum was hired about three to four months prior to the hearing based on Ritter's recommendation. Pierce testified that at the

time of McCollum's hire, she and Ritter had interviewed three or four candidates. According to Pierce, she had liked another applicant more than McCollum but Ritter had preferred McCollum and had expressed a strong preference that McCollum be hired. According to Pierce, she told Ritter that if Ritter felt strongly about McCollum, then the Employer would hire McCollum and it did so. Ritter testified that she and Pierce had interviewed six applicants, including McCollum, for the evening supervisor position. According to Ritter, she felt strongly that McCollum should be hired and had recommended that she be hired. Ritter testified that Pierce had liked another applicant as well. According to Ritter, she and Pierce had discussed the applicants and Ritter's recommendation was fully considered along with issues that had come up during the evaluations that pointed to McCollum as the best candidate for the position.

Evaluations. The Employer evaluates shelter supervisors after they have completed a 90 day probationary period and annually thereafter. There is nothing in the record showing that any shelter supervisor has received a promotion or a raise as a result of an evaluation. The record does show, as discussed more fully below, that one shelter supervisor has been terminated as a result of problems dealt with in the context of the evaluation process.

Ritter testified since she became shelter director, she had prepared five evaluations, including those for shelter supervisors Emily Ryan, Debbie Geer, Julie Whited, Erin Abdallah and Cher Wolfenbarger. She testified that she had done Whited's, Abdallah's, and Wolfenbarger's evaluation about two months prior to the hearing in this case and that during those evaluations, Program Director Pierce had informed her that she was going to be expected to do evaluations on her own.

The record contains a copy of four performance evaluations that Ritter participated in preparing, including an annual evaluation for the period November 20 1998 to February 20,

1999, for employee Emily Ryan dated March 5, 1999; a three month evaluation for Erin Abdallah dated August 9, 1999; a three month evaluation for Julie Whited dated August 9, 1999; and a three month evaluation for Cher Wolfenbarger dated August 9, 1999. These evaluations include numerical ratings in such areas as professional/personal characteristics of initiative, creativity and flexibility; interpersonal skills; judgement; work habits; ability to work independently; accepting direction of supervisors; and time management. Also included is a section for "supervisory skills," which includes a space for numerical ratings in leadership, evaluating performance, employee relations, and training subordinates. The "supervisory" section is only filled on Whited's and Abdallah's three-month evaluation, where there are scores of "4+" for the skill of leadership. The handwritten goals on Abdallah's evaluation include: "Increased acceptance of supervisor role; [Increase] comfort with decision making and delegating." Each of these evaluations is signed by Ritter as the preparer and as the supervisor.

Both Pierce and Ritter testified that they go over evaluations of shelter supervisors together. Ritter testified that with regard to the first evaluation she ever filled out, on weekend supervisor Emily Ryan, Pierce helped her fill out the numerical ratings because she was not certain of the meaning of all the terms used on the evaluation. She testified that on Ryan's evaluation, Pierce also wrote out the goals. Ritter testified that on the subsequent evaluations, Ritter decided on the numerical ratings but would ask Pierce if she had any problems or questions about them. According to Ritter, the goals were never written until Pierce and Ritter sat down with the employee and discussed the evaluation. According to Ritter, the goals typically arose out of the employee asking why they had received a lower score in a certain area or what they could do to improve their scores. She further testified that the goals were always discussed with Pierce before they were written for the employee.

Ritter testified that she has no independent authority to grant pay increases or merit increases for employees. Nor does the record contain any evidence of her recommending such increases or their being granted based on the evaluation process described above. Ritter testified that she has been evaluated twice on the same type of evaluation form as is used for the shelter supervisors. Ritter testified that on her evaluation, the portion of the evaluation pertaining to supervisory skills is filled out. The record does not include an evaluation form for Ritter.

The Shelter Director's Authority to Discharge and Discipline Employees. With regard to terminations, Pierce testified that Ritter has authority to terminate employees without consulting with anyone if the misconduct is "glaring." However, Pierce was not certain that she had ever communicated to Ritter that she possessed such authority. Ritter testified generally that she believed that she had an effective say in decisions to terminate the shelter supervisors and that it was an important part of her job.

Program Director Pierce testified that Emily Ryan, one of the weekend supervisors hired since Ritter became shelter director, had been terminated after four months of employment with the Employer. Pierce testified that at the time of Ryan's 90-day probationary evaluation, Ritter informed Pierce that she had concerns about Ryan. Specifically, Ritter was receiving many phone calls and pages from Ryan because Ryan was unable to independently handle situations that arose at the shelter during her weekend shifts. Pierce testified that her own contact with Ryan had been limited to observing Ryan work as a volunteer on the crisis line at the shelter, a job which was separate from Ryan's regular job as a weekend supervisor. Ritter testified that she believed Pierce had had ample opportunity to observe Ryan's work first-hand because of Pierce's visits to the shelter and because of discussions involving Ryan at regular staff meetings. Ritter testified that when she informed Pierce about Ryan calling her because she could not

handle situations at the shelter, Pierce spoke of a similar situation where Ryan had contacted Pierce when Ryan could not handle a situation.

Pierce and Ritter jointly prepared the 90-day probationary evaluation of Ryan; Ritter filled in the numerical scores with Pierce's help as explained above, and Pierce wrote up the goals for the evaluation. These included that Ryan needed to avoid being confrontational with clients; that she needed to show increasing responsibility in decision-making rather than calling the shelter director for non-emergencies; and that she needed to be more receptive when asked to do or approach something differently. The 90-day evaluation is signed by Ryan and by Ritter as the supervisor. At the bottom of the evaluation, Pierce wrote and initialed that Ryan's probationary period would be extended for 30 days. Ritter testified that the decision to extend the probationary period was Pierce's idea. According to Ritter, she and Pierce discussed that if at the end of the 30-day period there was no marked improvement in Ryan's performance, Ryan would be terminated.

Program Director Pierce testified that during this 30-day period, she had no opportunity to observe Ryan; that only Ritter did so. Ritter had two or more counseling sessions with Ryan; Pierce did not meet with Ryan in such sessions. After the 30 day extension of Ryan's probationary period, during which time Ryan worked at the shelter on two weekends, Ritter informed Pierce that she did not feel that there was any marked improvement in Ryan's performance. Specifically, Ritter testified that the last weekend that Ryan worked at the shelter, Ryan called Ritter three or four times to seek her guidance on handling situations. Although Ritter did not expressly recommend that Ryan be terminated, she testified that she knew that her report regarding Ryan's lack of improvement meant that Ryan would be terminated. She also testified that she did not believe that Ryan would have been terminated if she had reported to

Pierce that Ryan was meeting the goals. Ritter testified that Pierce told her to contact Ryan and set up the termination appointment. Ritter testified that she agreed with the decision to terminate Ryan but voiced her displeasure at having to call Ritter to set up the appointment. Pierce testified that she based the final decision to terminate Ryan on Ritter's information and did not independently evaluate the situation. Ritter testified that she was present at the meeting with Pierce where Ryan was terminated but was instructed by Pierce to let Pierce do the talking.

The record also contains a copy of a disciplinary memo signed by Pierce, Ritter and evening supervisor Cher Wolfenbarger, dated October 26, 1999, warning Wolfenbarger that she could be subject to termination if she did not take corrective action with regard to her acting in an "inappropriate and unacceptable" manner. The record does not disclose the conduct of Wolfenbarger that resulted in the issuance of the memo.

Ritter testified that Wolfenbarger's misconduct was reported to her by Wolfenbarger and by a local therapist who had witnessed it. She thereupon gave her opinion to Pierce, without it being solicited, that Wolfenbarger was doing a good job; that Ritter liked her; and that Ritter wanted Wolfenbarger to remain employed. According to Ritter, Pierce responded that the two issues had to be separated out; that Wolfenbarger was a good supervisor but nevertheless had engaged in inappropriate conduct outside the agency. About a week after the incident, Executive Director Johnson, Pierce and Ritter met in order to discuss what course of action to take. Executive Director Johnson testified that she informed Ritter that the Employer had several options, including termination, a written disciplinary action, or a verbal reprimand, and that Ritter had chosen the written disciplinary action. According to Johnson, Program Director Pierce had preferred termination but Ritter felt that Wolfenbarger was a valuable employee and preferred to do a written disciplinary action. After their meeting, Johnson drafted the above-

described letter and Ritter and Pierce signed it. Johnson confirmed that the wording in the disciplinary letter was Johnson's.

Pierce also testified that Ritter had complained to her on numerous occasions about weekend supervisor Debbie Geer and that Geer was transferred to the business office and ultimately fired by Linda Allison. The record does not disclose further details about the situation involving Geer.

Pierce and Ritter testified that there had been no other situations where Ritter had been involved in disciplining any employees other than by talking to employees about their problems and giving them suggestions.

Pierce testified that when budgetary figures involving grants are available, Johnson gives such information to Pierce and Pierce gives it to Ritter. Pierce testified that there are periods where no budgetary information is available but Ritter is still expected to avoid overspending. Ritter testified that she is not given a budget but rather has a petty cash fund the amount of which is not disclosed in the record. Ritter testified that her budgetary responsibilities are limited to such duties as separating purchases for food from purchases for non-food items on grocery receipts. According to Pierce, the evening supervisor does most of the grocery shopping for the shelter and the Employer has an account at a local grocery store for that purpose. She testified that she is not aware of a dollar limit on such purchases.

Pierce testified that Ritter is responsible for ensuring that shifts are covered at the shelter and that she has the authority to allow employees to switch shifts and to fill in for each other.

Ritter testified that if a permanent change in the schedule is required, she consults with Executive Director Johnson and Program Director Pierce, and that if a change involving only a specific shift is at issue, she consults with Pierce. She further testified that the night supervisor makes

her own arrangements to switch with another employee if she wants to take off a night. She also testified that she has no authority to grant a leave of absence without consulting with Pierce and Johnson. Pierce testified that she believed that Ritter had independent authority to authorize overtime if necessary but that the issue had never actually arisen. The record contains no examples of any overtime approved by Ritter. Ritter testified that she had no authority to authorize overtime and that she had been given strict instructions by Pierce that overtime was not to be worked. Johnson testified that Ritter does not authorize overtime but rather monitors it to ensure that it is not being abused by employees. The record contains no documentary evidence of Ritter's approval or requests for approval of changes in the schedule.

Ritter testified that she does not give workshops or training sessions to the staff and that her training of them consists of telling them where papers are located that they need to fill out and how to fill out the forms when clients come in. According to Ritter, all of the shelter supervisors and clients at the shelter receive a manual and a copy of the shelter agreement. The shelter agreement sets forth the rules that the shelter supervisors are responsible for enforcing and is an agreement between the client and the Employer.

Ritter conducts a shelter staff meeting every other week after the meeting for the full staff of the Employer. The shelter staff meeting is for the shelter supervisors under Ritter's direction and the children's advocate and the volunteer coordinator. Pierce also attends the meeting when she is available.

Ritter is paid \$10 an hour. Prior to her promotion to shelter director, she earned \$8 an hour as the day supervisor. She receives health care, vision and dental insurance from the Employer. Pierce testified that the shelter supervisors are hourly paid and that those who work more than 30 hours a week are also eligible to receive such benefits. The evening supervisor

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earns \$9.11 an hour; the night supervisor earns \$5.75 an hour; and the weekend supervisors work a 46-hour block of time, 26 of those hours are paid at a rate of \$6.15 an hour and 20 hours are paid at a \$2 an hour rate.

Volunteer Coordinator Maggie Michael. Maggie Michael has been the Employer's volunteer coordinator since about May, 1999. She oversees approximately 25 unpaid volunteers who staff the crisis line at the Employer's shelter. The parties stipulated that these volunteers are not statutory employees and should be excluded from the unit. Michael oversees only one paid employee, her assistant Natalie White-Bouie, who had been with the Employer less than 90 days at the time of the hearing. As indicated above, the parties have stipulated, and I find, that White-Bouie is an employee under the Act.

The record contains a position description for the volunteer coordinator position disclosing that this position is responsible to the program director and supervises the volunteer and crisis line programs. The responsibilities listed for the position include recruiting, training, supervising, developing and evaluating volunteer staff; conducting a minimum of two 40-hour domestic violence crisis intervention counselor training sessions each year; writing and distributing a monthly volunteer shift schedule and telephone lists; conducting monthly volunteer in-service training; maintaining volunteer staff records; attending regularly scheduled staff and shelter meetings; submitting monthly statistical reports; and managing the crisis-line service. The qualifications include, in relevant part, a bachelor's degree in a human service discipline or equivalent experience, and supervisory experience. Michael testified that she had received a copy of this job description when she interviewed for the position in May 1999.

Program Director Pierce testified that Michael independently runs the volunteer program.

Michael has recruited volunteers and screened them with the assistance of Pierce, Shelter

Director Ritter, and her husband Joe Michael, who is a counseling intern employed by the Employer. She can independently reject volunteers though she has not done so. Michael has twice set up the 40-hour training for the volunteers under state guidelines. This responsibility involves contacting guest speakers; scheduling the training; arranging for a location for the training; mailing information to prospective volunteers; and informing them of the training dates. Pierce testified that Michael has worked with Pierce and the Employer's former volunteer coordinator in setting up the training sessions and has also had access to materials from prior training conducted by the Employer. Michael testified that she had also conducted two or three in-service training sessions for the volunteers and that she had decided what was to be taught. She testified that the Employer had no training manual for the volunteers and that it was one her goals for the Employer to develop one.

Once the volunteers are trained, Michael is in continuous contact with them, scheduling their shifts on her own authority; overseeing them as they learn to answer calls on the crisis line; and working with them to develop their communications skills.

Michael testified that the Employer has clearly defined rules of conduct and that she has the authority to remove a volunteer on her own authority if they come to work drunk; possessing a weapon; or if they behave inappropriately towards clients. She testified that in such cases, she would remove the volunteer and then expect Pierce and Johnson to back up her decision. However, Pierce testified that if the situation was an "iffy" one where the Employer's policy in an area was not clearly defined, she consulted with Pierce. She testified that this had only happened once shortly after she had been hired and both she and Pierce had agreed that the volunteer in question should be retrained. The record does not disclose the details regarding the situation. Michael testified that she believed that in such cases she had the authority to

recommend that a volunteer be removed. The Employer does not have an evaluation for volunteers.

With regard to Natalie White-Bouie, the only employee that Michael oversees, Pierce testified that Michael had informed her that she wanted an assistant and had recommended White-Bouie for the position. According to Pierce, White-Bouie had been a volunteer for the Employer prior to that time and Pierce observed her at work on three or four occasions handling crisis calls. Executive Director Johnson thereafter determined that the Employer had funds for such a position for up to 12 hours a week through a subsidy with a junior college. Pierce then informed Michael that if she wanted to hire White-Bouie she could do so. There were no other applicants for the position.

Michael testified that she had been informed by former Volunteer Coordinator Reginia Buckner that White-Bouie had previously been a work-study student who had worked for the Employer as a volunteer and that White-Bouie might be interested in returning to work for the Employer. Michael talked to Johnson and told her that she needed an assistant and would like White-Bouie to return. Pierce or Johnson thereafter asked Michael to phone White-Bouie to determine if she was interested in returning. Michael did so and White-Bouie wanted to return to work for the Employer. She subsequently returned to work for the Employer in a one-year work study program with her college.

At the time of the hearing, White-Bouie had been employed less than 90 days and had not been evaluated. Michael testified that she had evaluated White-Bouie's class work and assumed that she would be involved in White-Bouie's 90-day evaluation in order to give her feedback on how well she was doing. However, as of the date of the hearing, she had not been told that she would be involved in the evaluation. Pierce testified that she would assist Michael in evaluating

White-Bouie by providing an evaluation form; answering any questions Michael had regarding the evaluation form; asking Michael if she had any concerns about White-Bouie's abilities; and assisting Michael to determine appropriate goals.

White-Bouie works up to twelve hours a week. She works eight hours on Tuesdays and on Thursdays she works four hours on the crisis line. White-Bouie fills out her own time sheets which Michael signs and faxes to Pierce. With regard to her authority over White-Bouie, Michael testified that she can assign tasks to White-Bouie such as making copies, filing, and answering the crisis line. White-Bouie also assists Michael in compiling crisis line statistics that must be submitted for funding purposes on a monthly basis. According to Michael, she spends about 10% of her time supervising White-Bouie, mostly by leaving notes for White-Bouie instructing her as to filing or other tasks that she should do. According to Michael, White-Bouie spends two-thirds of her time doing clerical work and one-third of her time working on the crisis line. Michael testified that in addition to White-Bouie's regular four-hour shift on the crisis line each week, both Michael and White-Bouie work on the crisis line whenever there are not enough volunteers to handle the line. They also frequently work on the crisis line when they are training new volunteers and showing them how to handle crisis calls. Michael testified that she is not always present with White-Bouie and when White-Bouie is working on the crisis line, Michael does not supervise her at all because White-Bouie knows what to do.

Michael testified that White-Bouie's schedule is flexible and she can independently approve adjustments to White-Bouie's schedule in order to accommodate White-Bouie's needs. According to Michael, this does not involve granting time off to White-Bouie but rather shifting her work times around when she has conflicts on particular days so that she can work her 12

hours each week. Michael cannot authorize White-Bouie to work more than 12 hours a week without obtaining Pierce's approval.

Michael testified that she can make suggestions to Pierce to have changes made in Employer policy but that on her own authority she can only make minor changes in policy. The record contains no specific examples of such changes. Michael further testified that she is expected to stay within her budget but that she is given little information on her budget so it is difficult to find out whether she is exceeding it or not. She also maintains a petty cash fund of \$50.

Michael has contact with Shelter Director Ritter every day because they both work at the shelter. Pierce is also at the shelter about three times a week and often talks with Michael and observes her interactions with volunteers.

Michael works Monday through Friday, 9 a.m. to 5 p.m., but has some flexibility in setting her hours to overlap with the volunteers who work from 9 a.m. to 9 p.m. She is hourly paid at a rate of \$11.83 an hour and works forty hours a week.

DVRT (Domestic Violence Response Team) Coordinator. The record contains a position description for the DVRT coordinator which shows that this position reports to the program director and supervises the domestic violence response team program based at the Chico Police Department. The responsibilities of the position include recruiting, training, supervising, developing and evaluating response team volunteers; conducting a minimum of two 40-hour domestic violence crisis intervention counselor training sessions each year in addition to training required by Chico Police Department policies; maintaining the volunteer shift schedule; conducting monthly volunteer in-service training; attending staff in-service sessions as required; submitting monthly statistical reports as required; recruiting, training, supervising, developing

and evaluating the program assistant; providing staff back-up to DVRT volunteers during regular business hours; initiating contact with domestic violence victims by next business day following an incident to provide information; providing follow up contact with victims to assist with safety planning, provide referrals, familiarize victims with criminal justice process, court procedure, and providing court accompaniment; serving as a victim advocate and liaison to victim witness services; and assisting police investigators. The qualifications for the position include, in relevant part, a bachelor's degree in human service discipline or equivalent experience; supervisory experience; a background check and completion of mandated 40-hour training and additional police department training. The position is described as working 40 hours a week at a pay rate of \$10 to \$12 an hour with travel reimbursement and benefits.

Pam Chambers has been the Employer's DVRT coordinator since about February 1998. She works out of the Chico Police Department. She has one paid assistant, Cindy Crain, and oversees eight or nine unpaid volunteers. The volunteers are called by the police to residences after domestic violence incidents.

Chambers screens and selects volunteers and can remove them on her own authority. She testified that she had selected seven volunteers based on the packet they had filled out and her interviews with them. The DVRT volunteers undergo the same 40-hour training as do the crisis line volunteers and they also have an additional eight hours of training consisting of a four-hour ride-a-long with the police and a four-hour observation at the police station. Chambers coordinates the additional training. She also schedules monthly in-services for the volunteers. According to Chambers, she selects the training topics without any prior approval from Pierce. The volunteers are not paid by the Employer but do receive reimbursements for mileage and

fingerprinting costs from the Employer. The volunteers work on shifts from 6 p.m. to 6 a.m. during the week and from 6 p.m. Friday until 6 a.m. Monday on the weekends.

Chamber's hours are Monday through Friday, 8 a.m. to 5 p.m., but she has some flexibility in scheduling her hours. She is also on call and carries a pager when she is not on duty. She handles all the follow up calls involving difficult victims and suspects. She is hourly paid at a rate \$10 per hour. She fills out and turns in her own time sheets.

Pierce testified that with regard to DVRT Assistant Cindy Crain, Pierce and Chambers and a police captain had jointly interviewed Crain and other applicants. Crain previously had been a volunteer for the Employer and was well respected. The record reflects Crain's hire was the result of a consensus among Chambers, Pierce and the police captain that Crain was the best candidate for the position.

Pierce testified that Chambers had evaluated Crain with the same type of evaluation form as is used for shelter supervisors. Chambers prepared a 90-day and a one year evaluation of Crain, assigning numerical scores in the areas as described above, and preparing an improvement plan for Crain that Pierce reviewed and approved. According to Chambers, Pierce does not instruct her what to write on the evaluation and Pierce "normally approves" what she has written.

Crain's job involves calling people who have been involved in domestic violence incidents and she also checks with the police department to ensure that packets of information regarding Employer services and other services in the area have been provided. She also rides along with Chambers or volunteers on domestic violence incidents. Crain works 20 hours a week.

Chambers testified that she is given a budget and a petty cash fund. She further testified that the policies and protocols for DVRT were already formed when she became the

coordinator.² According to Chambers, she has made only minor changes in policies and clears them with Pierce. For example, she testified that she requested that the volunteers be on call for seven rather than three consecutive days and that Pierce or Johnson approved her request.

Chambers also testified that currently she is working to expand the Employer's DVRT program to Chico State University and to Butte County through consultations with University police and the County Sheriff's department.

Analysis. As indicated above, the Employer contends that the individuals in the positions of shelter director, volunteer coordinator and DVRT coordinator are statutory supervisors and/or managerial employees who must be excluded from the unit and the Union takes the opposite position and seeks the inclusion of the persons in these positions in the unit.

Section 2(11) of the Act defines a supervisor as:

. . . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is interpreted in the disjunctive and the possession of any one of the authorities listed places the employee invested with this authority in the supervisory class. See *Providence Hospital*, 320 NLRB 717 (1996) enf'd 121 F.3d 548 (9th Cir. 1997).

In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are vested with "genuine management prerogative," and "straw bosses, lead men, and set up men" who are protected by the Act even though they perform minor supervisory duties." *NLRB*v. Bell Aerospace Co., 416 U.S. 267, 280-281 (1974). Finally, it is well established that the

According to Chambers, the protocol includes what the volunteers do; their dispatching procedures; and how they respond to calls.

burden of proving supervisory status is on the party asserting it. *Northern Montana Health Care Center*, supra.

Shelter Director Tami Ritter. With regard to Shelter Director Tami Ritter, the record establishes that she is a supervisor under the Act because she possesses the authority to effectively recommend the hire and discipline of employees. Thus, Ritter has participated in most of the interviews of shelter supervisors since she became shelter director and her recommendation was effective in prompting the hire of Evening Supervisor Marlene McCollum over another candidate that was preferred by Program Director Pierce for the position. Ritter has also evaluated the shelter supervisors and her report to Pierce that Weekend Supervisor Emily Ryan was not meeting the goals set forth in her 90-day probationary evaluation resulted in Ryan's discharge without further investigation by the Employer. Lastly, it appears from the record that Ritter effectively recommended that Weekend Supervisor Cher Wolfenbarger be issued a written disciplinary memo rather than be discharged. Given her authority to effectively recommend the hire and discipline for the shelter supervisors, I find that Ritter is a statutory supervisor who is excluded from the unit on that basis.

As I have found Ritter to be a statutory supervisor and excluded from the unit on this basis, it is unnecessary to reach the issue of whether she is a managerial employee and excludable from the unit on that basis as well.

Volunteer Coordinator Maggie Michael. With regard to Volunteer Coordinator Maggie Michael, the record does not support a finding that she is a supervisor under the Act. The only employee that Michael has any authority over is her assistant White-Bouie. The record does not establish that Michael made an effective recommendation regarding the hire of White-Bouie and she had not evaluated White-Bouie as of the date of the hearing. Further, it is plain from Pierce's

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testimony that she (Pierce) will be involved in that evaluation process and that she (Pierce) is present and has regular opportunities to observe White-Bouie working at the shelter.

White-Bouie is a 12-hour a week work-study student who is working under a program subsidized by a junior college. Although Michael can assign White-Bouie specific typing and filing work, I do not find that such assignments require the use of independent judgement by Michael as they involve only routine repetitive tasks. The record discloses only one type of arguably supervisory authority that Michael possesses over White-Bouie which involves the ability to adjust White-Bouie's schedule so that she can work the 12 hours a week that her position is funded for. Such adjustments do not involve granting time off or overtime to White-Bouie, but rather involve allowing her to shift her scheduled work hours in order to meet her needs. The record does not show how often this has occurred. Under the circumstances presented herein, I do not find that Michael's authority to allow adjustments in White-Bouie's hours warrants the conclusion that Michael is a statutory supervisor. Accordingly, she will not be excluded from the unit on that basis.

Whether Volunteer Coordinator Michael is a Managerial Employee. Managerial employees are defined as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974), quoting *Palace Laundry Dry Cleaning*, 75 NLRB 320, 323 n. 4 (1947). As the Supreme Court stated in *NLRB v. Yeshiva University*, 444 U.S. 672, 682-683 (1980):

These employees are "much higher in the managerial structure" than those explicitly mentioned by Congress which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was found necessary." Managerial employees must exercise discretion

within, or even independently of, established employer policy and must be aligned with management. Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy. The burden is on the party arguing for the exclusion of individuals from a unit on the basis of managerial status to prove that such individuals are managerial employees.

I do not find that Michael is a managerial employee given that her recruitment and selection of volunteers and coordination of their training is done in conjunction with Pierce under established Employer guidelines. Michael testified that she can make only minor changes in policy without consulting Pierce and the record is devoid of any examples of her exercise of discretion with regard to the effectuation or implementation of any managerial policies.

Accordingly, Volunteer Coordinator Michael will be included in the unit.

The DVRT Coordinator Pam Chambers. I find that the issues regarding whether DVRT Coordinator Pam Chambers is a statutory supervisor or a managerial employee cannot be resolved on the basis of the instant record and she will therefore be allowed to vote subject to challenge. Thus, the record shows that Chambers was involved in hiring her assistant Cindy Crain but that Pierce and the police captain were also involved in that hiring decision. Further, Chambers has evaluated DVRT Assistant Cindy Crain and these evaluations and the goals included in them have been approved by Pierce. However, the record does not show what those goals were or the actual effect of such evaluations on Crain's working conditions, if any. The record does show that Chambers and Crain work at the Chico Police Department and are away

from the Employer's main office and shelter where Crain would be in contact with other managers or supervisors.

Similarly, with regard to whether Chambers is a managerial employee, the record shows that she works at the Chico Police Department and that she runs a program involving numerous volunteers who are selected by her and for whom she is responsible. However, the record does not show any changes in managerial policy that she has effectuated without the involvement and approval of other stipulated managers.

Accordingly, as the evidence is insufficient to resolve the issues raised as to Chambers' supervisory and managerial status, she will be allowed to vote subject to challenge.

Conclusion. The Petitioner seeks to represent all of the Employer's direct client service employees, including counseling interns, DVRT coordinators, volunteer coordinators, children's advocates, client services advocates, legal advocates, evening supervisors, weekend supervisors, night supervisors, and program assistants employed out of the Employer's Chico and Orland, California locations. With the exception of the DVRT coordinator who will vote subject to challenge, I find that these employees share a substantial community of interest based on their common working conditions, including comparable pay rates; common supervision; their contact with each other; and their functional integration in carrying out the various aspects of the Employer's mission in serving persons who are victims of domestic violence. Thus, the petitioned-for unit is an appropriate unit for collective bargaining purposes within the meaning of Section 9(b) of the Act. As the parties have stipulated, and I have found, that the counseling interns are professional employees, they will be accorded a *Sonotone* election. See *Sonotone Corp.*, 90 NLRB 1236 (1950) If they choose to be included in the same unit with the non-

professional employees of the Employer, I find that this is an appropriate unit based on the above community of interest factors.

The <u>Sonotone</u> Election. As set forth above, the parties stipulated, and I have found, that the counseling interns are professional employees under the Act who should be accorded a Sonotone election. Accordingly, I shall direct separate elections in the following voting groups:

VOTING GROUP A

All full-time and regular part-time counseling interns employed by the Employer out of its Chico, California location; excluding all other employees, guards and supervisors as defined in the Act.

VOTING GROUP B

All full-time and regular part-time non-professional direct client service employees, including volunteer coordinators, children's advocates, client services advocates, legal advocates, evening supervisors, weekend supervisors, night supervisors, and program assistants employed by the Employer out of its Chico, California location; excluding all other employees, guards and supervisors as defined in the Act.

The employees in the professional voting Group A will be asked two questions on their ballots:

- 1. Do you desire to be included in the same unit as other employees employed by the Employer for the purpose of collective bargaining?
- 2. Do you desire to be represented for purposes of collective bargaining by Communication Workers of America, Local 9414?

If a majority of the professional employees in Voting group A vote yes to the first question, indicating a desire to be included in a unit with the non-professional employees, they will be so included. Their vote on the second question will then be counted with the votes of the non-professional employees voting in Voting Group B to decide whether to select Petitioner as the representative for the entire combined unit. The Petitioner has stated on the record its

willingness to represent the professional employees separately if those employees vote for separate representation. Thus, if the professional employees in Voting Group A do not vote for inclusion they will constitute a separate unit.

The ultimate determination will be based on the results of the elections. However, the following findings are made with regard to the appropriate units:

1. If the professional employees vote for inclusion in a unit with the non-professional employees, it is found that the following employees will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time direct client service employees including counseling interns, volunteer coordinators, children's advocates, client services advocates, legal advocates, evening supervisors, weekend supervisors, night supervisors, and program assistants employed by the Employer out of its Chico, California location; excluding guards and supervisors as defined in the Act.

2. If the professional employees vote against inclusion in the unit with the non-professional employees, it is found that the following units are appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

VOTING GROUP A

All full-time and regular part-time counseling interns employed by the Employer out of its Chico, California location; excluding all other employees, guards and supervisors as defined in the Act.

VOTING GROUP B

All full-time and regular part-time non-professional direct client service employees, including volunteer coordinators, children's advocates, client services advocates, legal advocates, evening supervisors, weekend supervisors, night supervisors, and program assistants employed by the Employer out of its Chico, California location; excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted by the undersigned among the employees in the voting groups set forth above at the time and place set forth in the notice of elections to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in each voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are per diem employees who worked an average of four hours per week in the 13 weeks immediately preceding the eligibility cut off date. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by COMMUNICATION WORKERS OF AMERICA, LOCAL 9414, AFL-CIO,CLC.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access

to a list of voters and their addresses which may be used to communicate with them. *Excelsior*

<u>Underwear, Inc.</u>, 156 NLRB 1236 (1966); <u>NLRB v. Wyman-Gordon Company</u>, 394 U.S. 759

(1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies

of an election eligibility list, containing the full names and addresses of all the eligible voters,

shall be filed by the Employer with the Regional Director of Region 20 who shall make the list

available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359

(1994). In order to be timely filed, such list must be received in the Region 20 Office, 901

Market Street, Suite 400, San Francisco, California 94103, on or before December 16, 1999. No

extension of time to file this list shall be granted except in extraordinary circumstances, nor shall

the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request

for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must

be received by the Board in Washington by December 23, 1999.

DATED at San Francisco, California, the 9th day of December, 1999.

Robert H. Miller, Regional Director

National Labor Relations Board

Region 20

901 Market Street, Suite 400

San Francisco, CA 94103-1735

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